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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,497	11/14/2001	Leola Henry	PIL0123/US	3217
33072	7590	05/17/2005		
KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082			EXAMINER TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/001,497	<b>Applicant(s)</b> HENRY ET AL.	
	<b>Examiner</b> Lien T. Tran	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed on 2/18/2005, applicant amended claim 1 to include the limitation of " wherein said biscuit swirl when baked has a baked specific volume of at least about 2.2". This limitation is not supported by the original disclosure. There is no disclosure of at least about 2.2. Page 24 discloses 2.4 and page 20 discloses values ranging from 2.8 to over 3. However, at least about 2.2 includes values that are not disclosed in the specification.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuechle et al in view of Hahn et al.

Kuechle et al disclose a dough used to prepare cut biscuits, drop biscuits, dumplings etc... The dough is shelf stable at freezing temperatures. The dough comprises about 30-51 weight percent flour, about .5-4 weight percent protein supplement, about 5-28 weight percent fat, about .5-12% sugar, about 1-5% leavening agent and water. The flour to water ratio is in the range of between about 2:1 to 1:1. Humectant is added to the dough to provide a water activity of less than .97. (see col. 3 lines 35-40, col. 4, col. 5 lines 15-16, col. 6 lines 50-54, col. 9 lines 1-5)

Kuechle et al do not disclose the frozen of biscuit having a smear layer, the weight of the biscuit as in claims 5-8, the smear flavor as in claims 9-15 and the baked specific volume of the product.

Hahn et al disclose dough product incorporating filling. The filling comprises fat, sugar, and flavorants. The sugar can be corn syrup solid, brown sugar, maple sugar, molasses, sucrose etc.. and mixtures of these sugars. The flavorants include spices, cream cheese, orange, fruit, fruit extract, cinnamon etc.... The fillings are used in conjunction with doughs to provide filled dough products. The fillings can be utilized with any type of dough to form any dough product that is desirably filled. The filled dough product is frozen. Examples of dough products include biscuits, croissants, scones, dinner rolls etc.. The filling has a water activity of at least about .725.(see columns 4-12 and example 1). Example 3 shows the a filled dough product is formed by spreading the filling on the dough sheet and rolling the filled dough sheet to form rolled dough product which is stored and baked before consumption.

It would have been obvious to one skilled in the art to use the filling as disclosed in Hahn et al in the dough product of Kuechle et al when desiring to make a filled dough product having different taste, texture and flavor. Hahn et al disclose any dough formulation, including biscuit, can be used with the filling. It would have been obvious to add different flavoring materials depending on the flavor wanted for the product. For example, if a cheese filling is wanted, it would have been obvious to add cheese flavor. It would also have been obvious to make the product in any size desired; this would have been an obvious matter of choice. It would also have been obvious to use

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margarine or butter as the fat source if such taste is desired. It is notoriously well known to use butter or margarine as a fat source. Kuechle et al disclose the dough product can be thawed and stored in the refrigerator for about 1-7 days. Thus, if one does not want to store the dough in the refrigerator, it would have been obvious to bake the dough without thawing. The Kuechle et al dough does not need to be proofed before baking. As to the specific volume, the dough fo Kuechle et al contain the same ingredients as the claimed dough and dough also includes biscuit dough. The ingredient in the dough that determines the specific volume is the chemical leavening agent. The Kuechle et al dough contains the same amount of leavening agent; thus, it is obvious the baked specific volume is within the range claimed. Even if the specific volume is not within the range claimed, it would have been obvious to one skilled in the art to vary dough parameters to obtain specific volume depending on the type of baked product made and the texture desired.

In the response filed 2/18/05, applicant argues the Kuechle disclosure does not contemplate the use of underdeveloped dough in a frozen, unbaked biscuit swirl configuration. The Kuechle reference is not used alone in the rejection. The Hahn et al reference is also used; the reference teaches the smear which can be used in dough product including biscuit. Hahn et al also teach the configuration of a swirl as shown in example 3 and the filled product can be frozen. It would have been obvious to one skilled in the art to make dough product containing the filling and the configuration as taught in Hahn et al using the dough of Kuechle to make different dough product . Applicant further argues Kuechle contemplates thawing out the dough before baking.

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Kuechle teaches the dough is stable in the refrigerator after thawing; there is no specific teaching of the requirement that the dough has to be thawed before baking. The dough of Kuechle contains the same ingredients and the amounts of the ingredients fall within the range claimed. Thus, it is obvious the dough has the same properties as claimed.

With respect to the Hahn et al reference, applicant argues Hahn et al do not teach or suggest a biscuit swirl. This argument is not persuasive. Hahn et al do teach using the filling with a biscuit and they also teach a swirl configuration. Whether one chooses to do the swirl configuration with biscuits or other type of rolls is a matter of preference because both the type of product and the configuration of the dough is taught. The combination of which would have been readily obvious to one skilled in the art.

Applicant also makes reference to a declaration filed on Sept. 16, 2004. The declaration has been considered but is not found to be persuasive because it does not address the issue of the rejection. The declaration does not make comparative showing to the prior art used. The declaration compares biscuit dough to laminated fully developed dough and fully developed dough. These doughs are not the same dough disclosed in Kuechle. Kuechle discloses an underdeveloped dough and the dough is used to make biscuit. The declaration does not make a comparison of the claimed product versus the dough disclosed in Kuechle. Thus, the showing is not an accurate comparison to show unexpected result.

Applicant's arguments filed 2/18/05 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday- Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
LIEN TRAN  
PRIMARY EXAMINER

Group 1700  
5/6/05